

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

JAMES DRAUCKER,
#23-000262,

Petitioner,

V.

STATE OF TEXAS,

Respondent.

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No. 3:23-cv-1469-X

ORDER ACCEPTING FINDINGS, CONCLUSIONS, AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE
JUDGE

Petitioner filed two motions pending before the Court: (1) a Motion to Reopen and (2) a Motion to Amend Judgment or Request New Trial. The United States Magistrate Judge made findings, conclusions, and recommendations on both motions. [Doc. 12; Doc. 16]. For the reasons described below, the Court **ACCEPTS** the Findings, Conclusions, and Recommendations of the United States Magistrate Judge.

Petitioner James Draucker filed a *pro se* application for a writ of habeas corpus under 28 U.S.C. § 2241 collaterally attacking his April 8, 2022 conviction in Rockwall County for driving while under the influence. [Doc. 3]. The Court entered judgment dismissing under Rule 4 of the Rules Governing Section 2254 Cases without prejudice to his right to fully and properly exhaust state remedies. [Doc. 10]. Draucker objected to the judgment and moved to reopen this case. [Doc. 11]. The United States Magistrate Judge made findings, conclusions, and a recommendation.

[Doc. 12]. The Magistrate Judge recommended the Court deny the motion because Draucker failed to show that the basis for the dismissal was incorrect. Draucker then filed a Motion to Amend Judgment or Request for New Trial attacking the integrity of the state criminal proceeding. [Doc. 15]. The United States Magistrate Judge made findings, conclusions, and a recommendation. [Doc. 16]. The Magistrate Judge recommended the Court also deny the Motion to Amend Judgment or Request for New Trial. Draucker filed an objection. [Doc. 17].

The District Court reviewed *de novo* those portions of the proposed findings, conclusions, and recommendations to which objection was made, and reviewed the remaining proposed findings, conclusions, and recommendation for plain error. Finding none, the Court **ACCEPTS** the Findings, Conclusions, and Recommendation of the United States Magistrate Judge.

The Court therefore **DENIES** Petitioner James Draucker's construed motion under Federal Rule of Civil Procedure 59(e) [Doc. 11] and **DENIES WITHOUT PREJUDICE** Petitioner James Draucker's Motion to Amend Judgment or Request for New Trial [Doc. 15].

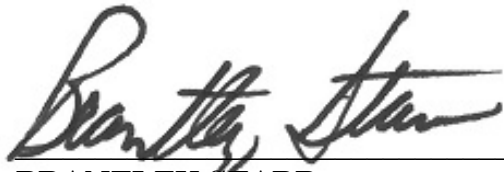
The Court previously denied Draucker a certificate of appealability (COA) as to the dismissal of his habeas petition. [Doc. 9]. But, insofar as a COA may be required to appeal the current denials, considering the record in this case and pursuant to Federal Rule of Appellate Procedure 22(b), Rule 11(a) of the Rules Governing §§ 2254 and 2255 proceedings, and 28 U.S.C. § 2253(c), the Court also **DENIES** a COA as to its denial of Draucker's construed Rule 59(e) motion [Doc. 11]

and as to its denial of Petition to Amend Judgment or Request for New Trial [Doc. 15].

But, if Draucker elects to file a notice of appeal, he must either pay the \$505 appellate filing fee or move for leave to appeal *in forma pauperis*.

And, solely for statistical purposes, the Court DIRECTS the Clerk of Court to REOPEN and then CLOSE this case based on the consideration of the construed Rule 59(e) motion and the Motion to Amend Judgment or Request for New Trial.

IT IS SO ORDERED this 5th day of October, 2023.



BRANTLEY STARR
UNITED STATES DISTRICT JUDGE